IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 90 OF 1997

1) Shri Ravi S. Shirodkar,

2) Shri Chandrakant S. Shirodkar,

3) Shri Shantaram S. Shirodkar,

4) Shri Gopi U. Shirodkar;

5) Shri Uttam Ganashayam Mahale;

6) Shri Krishna U. Shirodkar,

(since deceased) now by his legal heirs :
(a) Radha K. Shirodkar;
(b) Premanand K. Shirodkar;
(c) Vinayak K. Shirodkar;
(d) Miss Roshan K. Shirodkar;
(e) Miss Sushma K. Shirodkar;
(f) Miss Sunita K. Shirodkar;
(g) Mrs. Sulabha V. Khandeparkar;
(h) Mr. Vithal Pandurang Khandeparkar,

All residents of Ciunamol,
Sanguem – Goa. ..... Appellants.

V/s.

(1) Shri Anand G. Mahale alias
Anand T. Shirodkar;
Resident of Ciunamol, Sanguem, Goa.

(2) Shri Gajanan T. Shirodkar;

(3) Shri Datta A. Shirodkar
(since deceased) now
by his legal heirs :

(a) Narendra D. Shirodkar, son;
(b) Smt. Namita N. Shirodkar,
daughter-in-law;
(c) Surendra D. Shirodkar, son;
(d) Santosh D. Shirodkar, son;
(e) Vishwas D. Shirodkar, son;

(f) Ravindra D. Shirodkar, son;
(g) Sunanda Sudhir N. daughter in law;
All residents of Ciunamol, Sanguem, Goa.
(h) Sudhir Balkrishna Nhavi;
(i) Shrimati Sugandha Gurudas Shirgaonkar;
(j) Gurudas Shirgaonkar,
Residents of Chinchinim, Near the Church,
Salcete, Goa.
(k) Smt. Sindhu Vilas Pednekar;
(l) Vilas Pednekar,
both residents of Municipal Market,
Shop NO.45, Panaji, Goa.
(m) Smt. Suman Suresh Sakhalkar,
(n) Suresh Sakhalkar,
both residents of Porvorim, Bardez, Goa.

(4) Shri Pandurang M. Shirodkar, resident of
(since deceased) through legal heirs :

(a) Shobhavati Pandurang
Shirodkar (wife);
(b) Pratap Pandurang Shirodkar, (son);
(c) Bhavesh Pandurang Shirodkar (son);
(d) Rupa Pandurang Shirodkar
(daughter);
(e) Suvarna Pandurang Shirodkar
(daughter);

All at Sr. Nos. (a) to (e) are
residents of Khinamol, Sanguem, Goa.

(f) Prashanti Pandurang Shirodkar,
(daughter), C/o. John Bar,
Nesai, Padribhat, Salcete, Goa.

(5) Shri Shantaram N. Shirodkar (since
deceased) now by his legal heirs :

(a) Smt. Shali S. Shirodkar;
(b) Kum. Jaimini S. Shirodkar,
(c) Master Deepal S. Shirodkar;
(d) Kum. Jyoti S. Shirodkar,

All residents of Ciunamol,
Sanguem – Goa. ..... Respondents.

Mr. D. Pangam, Advocate for the appellants.

Ms. S. Linhares, Advocate for respondents No.1, 2, 3(a) to 3(n), 4(a), (b), (c) and (e) and 5(a) to 5(d).

CORAM : B.H. MARLAPALLE, J.

DATE : OCTOBER 08, 2004.

ORAL JUDGMENT :

This appeal arises from the Award passed in Land Acquisition Case No. 50/1982, passed on 3.3.1997 by the learned Addl. District Judge, South Goa, Margao on an application referred by the Collector for adjudication under Section 30 of the Land Acquisition Act, 1894 (for short, "the Act").

2. The land in plots No.3 and 4 in Survey No.65 came to be acquired for the construction of Sanguem – Costi road and the Land Acquisition Officer had passed the Award on 30.7.1981. The claims for compensation were raised by different parties and, therefore, the Land Acquisition Officer forwarded the claim to the Court below for deciding under Section 30 of the Act. Plot No.3 consisted of two portions, one admeasuring 429 sq. metres and the other admeasuring 640 sq. metres and both of them were acquired. Whereas Plot No.4 was acquired only to the extent of 985 sq. metres.

3. From the evidence that was placed before the Court below,

it was proved that Ghanashyam Malo alias Shirodkar had four sons by name Hondo, Uttam, Tutulo and Morto. All these four brothers were living as a members of the joint family and were in possession and enjoyment of three aforamentos, namely "Chamara Codo", "Chaamara Fondul" and "Chamara Koddu", all situated at Mugali of Sanguem Taluka. The cultivation on this land was that of coconut and cashew trees and it was claimed that the three aforamentos were partitioned to four and included under Survey No. 65/0. However, in the resurvey, this survey No. 65/0 was divided into seven holdings i.e. Survey No.65/1 to 65/7 of Village Mugali and the three portions, namely Survey Nos. 65/1 to 65/3 fell in Sanguem. This is clear from the order passed by the Awal Karkun dated 15/2/1977 (Exhibit RW.1/A) and the order dated 9.7.1985. Survey Nos.65/1 and 65/7 were allotted to the heirs of Morto, Survey No. 65/2 to the heirs of Tutulo , Survey No. 65/3 and 65/6 to the heirs of Uttam and 65/4 to the heirs of Shanu, Survey No.65/5 (Mugali Village) to the widow of Shanu , Survey No.65/1 to the heirs of Uttam, Morto and Tutulo, Survey No.65/2 to the widow of Shanu and Chandrakant, Shantaram and Ravi and Survey No.65/3(Village Sanguem) to the other persons who were not concerned with the proceedings. Shanu was the son of Hando and he was survived by his widow Laxmi and three sons, namely Chandrakant, Shantaram and Ravi. Whereas, Uttam was survived by two sons, Gopi and Krishna, Tutulo was survived by his son Anand and Morto by five sons by names Gajanan, Pandurang, Datta, Ghanashyam and Shantaram. The acquired land from plots

No.3 and 4 was not from the entire holding of the family. Plot No.4 comprised the land from Survey Nos. 65/1 to 4 of Mugali Village. Whereas, Plot No.3 comprised the land in Survey No.65/2 of Sanguem Village. The respondents before the Court below had contended that the payments should be made as per the survey records and in view of the orders passed by the Awal Karkun, Exhibit RW.1/A and Exhibit R-2. The survey plans were placed on record at Exhibits R.1 and R.3. Whereas the applicants had contended that the land in Plot No.3 and under acquisition was entirely from their share and about 640 sq. metres was from the share of late Uttam. They had further contended that the acquired land from Plot No.4 was entirely from their share.

4. The evidence as led by the respective parties proved beyond doubt that the entire land falling in both the Village boundaries, was held jointly by four brothers, namely Hando, Tutulo, Morto and Uttam. But the applicants had contended that the land was in the names of Hando, Uttam and Shanu. But, the evidence placed before the reference Court proved otherwise. Shanu is the son of Hando and the first aforamento known as “Chamara Codvo” was standing in the name of Hando, the second aforamento by name “Chamara Fondul” was standing in the name of Uttam and the third aforamento by name “Chamara Koddu” was standing in the name of Shanu. However, orders passed by the Awal Karkun and which had received finality, indicated that the land in Plots No.3 and 4 was a joint property of four brothers, namely Hando, Uttam, Tutulo and

Morto. So far as the acquired land was concerned, it fell in Survey No.65/1 to 4 of Mugali Village and Survey No. 65/2 of Sanguem Village. On assessment of the evidence, the reference was allowed and it was directed that the compensation for the area admeasuring 1069 sq. metres be paid equally to the widow of Shanu i.e. Laxmi Shirodkar and his three sons Chandrakant, Shantaram and Ravi. This was the land in Plot No.3. Whereas the land in Plot No.4 and under Acquisition admeasuring 985 sq. metres, was sub-divided as under :

(a) compensation for an area of 124 sq. metres to be paid to Chandrakant Shanu Shirodkar, Shantaram Shanu Shirodkar and Ravi Shanu Shirodkar;

(b) compensation for an area of 287 sq. metres be paid to Gopi Uttam Shirodkar and heirs of Krishna Uttam Shirodkar;

(c) compensation for an area of 287 sq. metres be paid to Anand Tutulo Shirodkar; and

(d) Compensation for an area of 287 sq. metres be paid to Gajanan Morto Shirodkar, Pandurang Morto Shirodkar, and the heirs of Datta Morto Shirodkar, Ghanashyam Morto Shirodkar and heirs of Shantaram Morto Shirodkar.

5. The above said distribution made by the Court below appears to be in consonance with the area division pursuant to the orders passed by the Awal Karkun on 15.2.1977 and 9.7.1985. It was contended by the learned Counsel for the appellants that the dispute regarding the apportionment of shares of all the heirs, was pending

for adjudication before the District Court in an independent proceedings. Be that as it may, this appeal arising from the reference under Section 30 of the Act would not, in any way, have a bearing on the pending case before the District Court and the apportionment as made in the impugned order and which is required to be confirmed, has been made strictly on the basis of the evidence that was placed before the learned Addl. District Judge.

6. On the assessment of the oral and the documentary evidence as discussed by the learned Addl. District Judge, while passing the impugned Award, there appears to be no error apparent on the face of the record or any cause for causing interference in the view taken by him. This appeal, therefore, must fail and the same is, hereby, dismissed with a clarification that the pending suit will proceed on its own merits.

B.H. MARLAPALLE, J.

ssm.